

REFERENCE TITLE: **surgical assistants; licensure**

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1327

Introduced by
Senator Leff: Representative Stump

AN ACT

AMENDING SECTION 32-1805, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 17, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 5; MAKING AN APPROPRIATION; RELATING TO SURGICAL ASSISTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 32-1805, Arizona Revised Statutes, is amended to
3 read:

4 32-1805. Board of osteopathic examiners in medicine and surgery
5 fund; separate account; disbursements

6 A. THE BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY FUND IS
7 ESTABLISHED. Before the end of ~~the~~ EACH calendar month, pursuant to sections
8 35-146 and 35-147, the board shall deposit ten per cent of all monies
9 received by the board from fees and other monies provided for in section
10 32-1826 in the state general fund and deposit the remaining ninety per cent
11 in the board OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY fund. All
12 monies derived from civil penalties collected pursuant to section 32-1855
13 shall be deposited, pursuant to sections 35-146 and 35-147, in the state
14 general fund.

15 B. THE BOARD SHALL ESTABLISH A SEPARATE ACCOUNT FOR MONIES RECEIVED
16 PURSUANT TO ARTICLE 5 OF THIS CHAPTER.

17 ~~B-~~ C. Monies deposited in the board OF OSTEOPATHIC EXAMINERS IN
18 MEDICINE AND SURGERY fund ~~shall be~~ ARE subject to section 35-143.01.

19 Sec. 2. Title 32, chapter 17, Arizona Revised Statutes, is amended by
20 adding article 5, to read:

21 ARTICLE 5. SURGICAL ASSISTANTS

22 32-1881. Definitions

23 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

24 1. "DIRECT SUPERVISION" MEANS SUPERVISION BY A SUPERVISING PHYSICIAN
25 WHO IS PHYSICALLY PRESENT AND WHO PERSONALLY DIRECTS DELEGATED ACTS AND
26 REMAINS IMMEDIATELY AVAILABLE TO PERSONALLY RESPOND TO ANY EMERGENCY UNTIL
27 THE PATIENT IS RELEASED FROM THE OPERATING ROOM OR HAS BEEN TRANSFERRED TO
28 THE CARE AND RESPONSIBILITY OF ANOTHER PHYSICIAN.

29 2. "PHYSICIAN" MEANS A PHYSICIAN WHO IS LICENSED PURSUANT TO THIS
30 CHAPTER OR CHAPTER 13 OF THIS TITLE.

31 3. "SURGICAL ASSISTANT" MEANS A PERSON WHO IS LICENSED BY THE BOARD
32 PURSUANT TO THIS ARTICLE AND WHO PERFORMS SURGICAL ASSISTING.

33 4. "SURGICAL ASSISTING" MEANS PROVIDING AID UNDER DIRECT SUPERVISION
34 IN EXPOSURE, HEMOSTASIS, CLOSURES AND OTHER INTRAOPERATIVE TECHNICAL
35 FUNCTIONS THAT ASSIST A PHYSICIAN TO PERFORM AN OPERATION. SURGICAL
36 ASSISTING DOES NOT INCLUDE TECHNICAL TASKS DELEGATED BY A SUPERVISING
37 PHYSICIAN TO A TECHNICIAN OR ANY OTHER ASSISTANT OR EMPLOYEE WHO PERFORMS
38 DELEGATED TASKS IN A SURGICAL SETTING AND WHO IS NOT RENDERING SERVICES AS A
39 LICENSED SURGICAL ASSISTANT OR CLAIMING TO BE A LICENSED SURGICAL ASSISTANT.

40 5. "UNPROFESSIONAL CONDUCT" INCLUDES THE FOLLOWING ACTS BY A SURGICAL
41 ASSISTANT THAT OCCUR IN THIS STATE OR ELSEWHERE:

42 (a) VIOLATING ANY FEDERAL OR STATE LAW OR RULE THAT APPLIES TO THE
43 PERFORMANCE OF SURGICAL ASSISTING AS A SURGICAL ASSISTANT. CONVICTION IN ANY
44 COURT OF COMPETENT JURISDICTION IS CONCLUSIVE EVIDENCE OF A VIOLATION.

- 1 (b) CLAIMING TO BE A PHYSICIAN OR KNOWINGLY PERMITTING ANOTHER PERSON
2 TO CLAIM TO BE A PHYSICIAN.
- 3 (c) PERFORMING SURGICAL ASSISTING TASKS THAT ARE NOT DELEGATED BY THE
4 SUPERVISING PHYSICIAN.
- 5 (d) HABITUAL INTEMPERANCE IN THE USE OF ALCOHOL OR HABITUAL SUBSTANCE
6 ABUSE.
- 7 (e) GROSS MALPRACTICE, REPEATED MALPRACTICE OR ANY MALPRACTICE
8 RESULTING IN THE DEATH OF A PATIENT.
- 9 (f) ANY CONDUCT OR PRACTICE THAT IS OR MIGHT BE HARMFUL OR DANGEROUS
10 TO THE HEALTH OF A PATIENT OR THE PUBLIC.
- 11 (g) VIOLATING A FORMAL ORDER, PROBATION AGREEMENT OR STIPULATION
12 ISSUED BY THE BOARD OR ITS EXECUTIVE DIRECTOR.
- 13 (h) PROCURING OR ATTEMPTING TO PROCURE A SURGICAL ASSISTANT LICENSE BY
14 FRAUD, MISREPRESENTATION OR KNOWINGLY TAKING ADVANTAGE OF THE MISTAKE OF
15 ANOTHER.
- 16 (i) USING CONTROLLED SUBSTANCES THAT HAVE NOT BEEN PRESCRIBED BY A
17 PHYSICIAN, PHYSICIAN ASSISTANT, DENTIST OR NURSE PRACTITIONER FOR USE DURING
18 A PRESCRIBED COURSE OF TREATMENT.
- 19 (j) KNOWINGLY MAKING ANY WRITTEN OR ORAL FALSE OR FRAUDULENT STATEMENT
20 IN CONNECTION WITH THE PERFORMANCE OF SURGICAL ASSISTING OR WHEN APPLYING FOR
21 PRIVILEGES OR RENEWING AN APPLICATION FOR PRIVILEGES AT A HEALTH CARE
22 INSTITUTION.
- 23 (k) COMMITTING A FELONY, WHETHER OR NOT INVOLVING MORAL TURPITUDE, OR
24 A MISDEMEANOR INVOLVING MORAL TURPITUDE. IN EITHER CASE, CONVICTION BY A
25 COURT OF COMPETENT JURISDICTION OR A PLEA OF NO CONTEST IS CONCLUSIVE
26 EVIDENCE OF THE COMMISSION.
- 27 (l) HAVING A CERTIFICATION OR LICENSE REFUSED, REVOKED, SUSPENDED,
28 LIMITED OR RESTRICTED BY ANY OTHER LICENSING JURISDICTION FOR THE INABILITY
29 TO SAFELY AND SKILLFULLY PERFORM SURGICAL ASSISTING OR FOR UNPROFESSIONAL
30 CONDUCT AS DEFINED BY THAT JURISDICTION THAT DIRECTLY OR INDIRECTLY
31 CORRESPONDS TO ANY ACT OF UNPROFESSIONAL CONDUCT AS PRESCRIBED BY THIS
32 PARAGRAPH.
- 33 (m) HAVING SANCTIONS, INCLUDING RESTRICTION, SUSPENSION OR REMOVAL
34 FROM PRACTICE, IMPOSED BY AN AGENCY OF THE FEDERAL GOVERNMENT.
- 35 (n) VIOLATING OR ATTEMPTING TO VIOLATE, DIRECTLY OR INDIRECTLY, OR
36 ASSISTING IN OR ABETTING THE VIOLATION OF OR CONSPIRING TO VIOLATE ANY
37 PROVISION OF THIS ARTICLE.
- 38 (o) FAILING TO FURNISH LEGALLY REQUESTED INFORMATION TO THE BOARD OR
39 ITS INVESTIGATOR IN A TIMELY MANNER.
- 40 (p) FAILING TO ALLOW PROPERLY AUTHORIZED BOARD PERSONNEL TO EXAMINE ON
41 DEMAND DOCUMENTS, REPORTS AND RECORDS OF ANY KIND RELATING TO THE SURGICAL
42 ASSISTANT'S PERFORMANCE OF SURGICAL ASSISTING.
- 43 (q) KNOWINGLY MAKING A FALSE OR MISLEADING STATEMENT ON A FORM
44 REQUIRED BY THE BOARD OR IN WRITTEN CORRESPONDENCE OR ATTACHMENTS FURNISHED
45 TO THE BOARD.

1 (r) FAILING TO SUBMIT TO A BODY FLUID EXAMINATION OR OTHER
2 EXAMINATIONS KNOWN TO DETECT THE PRESENCE OF ALCOHOL OR OTHER DRUGS PURSUANT
3 TO AN AGREEMENT WITH THE BOARD OR AN ORDER OF THE BOARD.

4 (s) ALLOWING THE USE OF THE LICENSEE'S NAME IN ANY WAY TO ENHANCE OR
5 PERMIT THE CONTINUANCE OF THE ACTIVITIES OF, OR MAINTAINING A PROFESSIONAL
6 CONNECTION WITH, AN ILLEGAL PRACTITIONER OF MEDICINE OR THE PERFORMANCE OF
7 SURGICAL ASSISTING BY A PERSON WHO IS NOT LICENSED PURSUANT TO THIS ARTICLE.

8 (t) PERFORMING SURGICAL ASSISTING UNDER A FALSE OR ASSUMED NAME IN
9 THIS STATE.

10 (u) EXCEPT AS OTHERWISE REQUIRED BY LAW, INTENTIONALLY BETRAYING A
11 PROFESSIONAL SECRET OR INTENTIONALLY VIOLATING A PRIVILEGED COMMUNICATION.

12 (v) FALSE, FRAUDULENT, DECEPTIVE OR MISLEADING ADVERTISING BY A
13 SURGICAL ASSISTANT.

14 (w) ENGAGING IN SEXUAL CONDUCT WITH A CURRENT PATIENT OR WITH A FORMER
15 PATIENT WITHIN SIX MONTHS AFTER THE LAST SURGICAL ASSISTING UNLESS THE
16 PATIENT WAS THE LICENSEE'S SPOUSE AT THE TIME OF THE CONTACT OR, IMMEDIATELY
17 PRECEDING THE PROFESSIONAL RELATIONSHIP, WAS IN A DATING OR ENGAGEMENT
18 RELATIONSHIP WITH THE LICENSEE. FOR THE PURPOSES OF THIS SUBDIVISION, "SEXUAL
19 CONDUCT" INCLUDES:

20 (i) ENGAGING IN OR SOLICITING SEXUAL RELATIONSHIPS, WHETHER CONSENSUAL
21 OR NONCONSENSUAL.

22 (ii) MAKING SEXUAL ADVANCES, REQUESTING SEXUAL FAVORS OR ENGAGING IN
23 OTHER VERBAL CONDUCT OR PHYSICAL CONTACT OF A SEXUAL NATURE WITH A PATIENT.

24 (iii) INTENTIONALLY VIEWING A COMPLETELY OR PARTIALLY DISROBED PATIENT
25 IN THE COURSE OF TREATMENT IF THE VIEWING IS NOT RELATED TO PATIENT DIAGNOSIS
26 OR TREATMENT UNDER CURRENT PRACTICE STANDARDS.

27 (x) CHARGING A FEE FOR SERVICES NOT RENDERED OR DIVIDING A
28 PROFESSIONAL FEE FOR PATIENT REFERRALS AMONG HEALTH CARE PROVIDERS OR HEALTH
29 CARE INSTITUTIONS OR BETWEEN THESE PROVIDERS AND INSTITUTIONS OR A
30 CONTRACTUAL ARRANGEMENT THAT HAS THE SAME EFFECT.

31 (y) OBTAINING A FEE BY FRAUD, DECEIT OR MISREPRESENTATION.

32 (z) CHARGING OR COLLECTING A CLEARLY EXCESSIVE FEE. IN DETERMINING IF
33 A FEE IS CLEARLY EXCESSIVE, THE BOARD SHALL CONSIDER THE FEE OR RANGE OF FEES
34 CUSTOMARILY CHARGED IN THE STATE FOR SIMILAR SERVICES IN LIGHT OF MODIFYING
35 FACTORS SUCH AS THE TIME REQUIRED, THE COMPLEXITY OF THE SERVICE AND THE
36 SKILL REQUISITE TO PERFORM THE SERVICE PROPERLY.

37 (aa) FAILING OR REFUSING TO MAINTAIN ADEQUATE RECORDS ON A PATIENT.

38 32-1882. Powers and duties

39 A. THE BOARD SHALL:

40 1. PROTECT THE PUBLIC FROM UNLAWFUL, INCOMPETENT, UNQUALIFIED,
41 IMPAIRED AND UNPROFESSIONAL SURGICAL ASSISTANTS.

42 2. CONDUCT EXAMINATIONS FOR APPLICANTS FOR A LICENSE UNDER THIS
43 ARTICLE, ISSUE LICENSES, CONDUCT HEARINGS, PLACE SURGICAL ASSISTANTS ON
44 PROBATION, REVOKE OR SUSPEND LICENSES, ENTER INTO STIPULATED ORDERS, ISSUE

1 LETTERS OF CONCERN OR DECREES OF CENSURE AND ADMINISTER AND ENFORCE THIS
2 ARTICLE.

3 3. ORDER AND EVALUATE PHYSICAL, PSYCHOLOGICAL, PSYCHIATRIC AND
4 COMPETENCY TESTING OF LICENSED SURGICAL ASSISTANTS AND CANDIDATES FOR
5 LICENSURE AS THE BOARD DETERMINES IS NECESSARY TO ENFORCE THIS ARTICLE.

6 4. INITIATE INVESTIGATIONS AND DETERMINE ON ITS OWN MOTION IF A
7 SURGICAL ASSISTANT HAS ENGAGED IN UNPROFESSIONAL CONDUCT OR PROVIDED
8 INCOMPETENT SURGICAL ASSISTING CARE OR IS MENTALLY OR PHYSICALLY UNABLE TO
9 ENGAGE IN THE PRACTICE OF SURGICAL ASSISTING.

10 5. ENFORCE, WITHIN THE SURGICAL ASSISTING PROFESSION IN THIS STATE,
11 THE STANDARDS OF PRACTICE PRESCRIBED BY THIS ARTICLE AND THE RULES ADOPTED BY
12 THE BOARD PURSUANT TO THIS ARTICLE.

13 6. COLLECT AND ACCOUNT FOR ALL FEES PROVIDED FOR BY THIS ARTICLE AND
14 DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ALL MONIES RECEIVED IN THE
15 APPROPRIATE FUND.

16 7. CHARGE ADDITIONAL FEES FOR SERVICES THAT THE BOARD DEEMS
17 APPROPRIATE TO CARRY OUT ITS INTENT AND PURPOSE AND THAT DO NOT EXCEED THE
18 COSTS OF RENDERING THE SERVICES.

19 8. MAINTAIN A RECORD OF ITS ACTS AND PROCEEDINGS INCLUDING THE
20 ISSUANCE, REFUSAL, RENEWAL, SUSPENSION OR REVOCATION OF LICENSES TO PRACTICE
21 ACCORDING TO THIS ARTICLE. THE BOARD SHALL ONLY DELETE RECORDS OF COMPLAINTS
22 AS FOLLOWS:

23 (a) IF THE BOARD DISMISSES A COMPLAINT, THE BOARD SHALL DELETE THE
24 PUBLIC RECORD OF THE COMPLAINT THREE YEARS AFTER IT DISMISSED THE COMPLAINT.

25 (b) IF THE BOARD HAS ISSUED A LETTER OF CONCERN BUT HAS TAKEN NO
26 FURTHER ACTION, THE BOARD SHALL DELETE THE PUBLIC RECORD OF THE COMPLAINT
27 FIVE YEARS AFTER IT ISSUED THE LETTER OF CONCERN.

28 9. MAINTAIN A ROSTER OF ALL SURGICAL ASSISTANTS WHO ARE LICENSED
29 PURSUANT TO THIS ARTICLE THAT INCLUDES:

30 (a) THE NAME OF THE LICENSEE.

31 (b) THE LICENSEE'S CURRENT PROFESSIONAL OFFICE ADDRESS.

32 (c) THE DATE AND NUMBER OF THE LICENSE ISSUED TO THE SURGICAL
33 ASSISTANT PURSUANT TO THIS ARTICLE.

34 (d) WHETHER THE LICENSE IS IN GOOD STANDING.

35 10. PUBLISH ADVISORY OPINIONS REGARDING FUNCTIONS OF SURGICAL
36 ASSISTANTS.

37 11. REVIEW THE CREDENTIALS AND THE ABILITIES OF AN APPLICANT WHOSE
38 PROFESSIONAL RECORDS OR PHYSICAL OR MENTAL CAPABILITIES MAY NOT MEET THE
39 REQUIREMENTS FOR LICENSURE AS PRESCRIBED IN THIS ARTICLE IN ORDER FOR THE
40 BOARD TO DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS FOR LICENSURE
41 PURSUANT TO THIS ARTICLE.

42 12. DISCIPLINE AND REHABILITATE SURGICAL ASSISTANTS.

43 B. THE RECORDS OF THE BOARD ARE OPEN TO PUBLIC INSPECTION AT ALL
44 REASONABLE TIMES.

1 C. THE BOARD MAY:
2 1. ADOPT RULES NECESSARY OR PROPER FOR THE ADMINISTRATION OF THIS
3 ARTICLE.
4 2. ACCEPT AND SPEND FEDERAL MONIES AND PRIVATE GRANTS, GIFTS,
5 CONTRIBUTIONS AND DEVICES. THESE MONIES DO NOT REVERT TO THE STATE GENERAL
6 FUND AT THE END OF A FISCAL YEAR.
7 32-1883. Executive director; responsibilities; board immunity
8 A. THE EXECUTIVE DIRECTOR SHALL CARRY OUT THE ADMINISTRATIVE
9 RESPONSIBILITIES OF THE LICENSURE AND DISCIPLINE OF PERSONS WHO ARE LICENSED
10 PURSUANT TO THIS ARTICLE.
11 B. BOARD MEMBERS, THE EXECUTIVE DIRECTOR AND BOARD STAFF ARE IMMUNE
12 FROM CIVIL LIABILITY FOR GOOD FAITH ACTIONS TAKEN TO ENFORCE THIS ARTICLE.
13 32-1884. Surgical assistants; scope of practice;
14 identification; civil penalty
15 A. A SURGICAL ASSISTANT MAY PERFORM THE FOLLOWING PREOPERATIVE,
16 INTRAOPERATIVE AND POSTOPERATIVE HEALTH CARE TASKS UNDER DIRECT SUPERVISION
17 IN A SETTING AUTHORIZED BY THE SUPERVISING PHYSICIAN, INCLUDING CLINICS,
18 HOSPITALS, AMBULATORY SURGICAL CENTERS AND OTHER HEALTH CARE INSTITUTIONS:
19 1. ASSIST WITH POSITIONING THE PATIENT.
20 2. ASSIST WITH PREPARING THE SKIN.
21 3. PROVIDE VISUALIZATION AND EXPOSURE OF THE OPERATIVE SITE INCIDENT
22 TO THE OPERATIVE PROCEDURE.
23 4. ASSIST WITH HEMOSTASIS.
24 5. ASSIST WITH CLOSURE OF BODY PLANES.
25 6. SELECT AND APPLY WOUND DRESSING.
26 7. PROVIDE ASSISTANCE IN SECURING DRAINAGE SYSTEMS TO TISSUE.
27 8. PERFORM OTHER SURGICAL ASSISTING TASKS THAT ARE CONSISTENT WITH THE
28 TRAINING AND EXPERIENCE OF THE SURGICAL ASSISTANT AND THAT HAVE BEEN PROPERLY
29 DELEGATED BY AND APPROVED BY THE SUPERVISING PHYSICIAN.
30 B. AT ALL TIMES WHILE A SURGICAL ASSISTANT IS ON DUTY, THE SURGICAL
31 ASSISTANT SHALL WEAR A NAME TAG WITH THE DESIGNATION "SURGICAL ASSISTANT" ON
32 IT.
33 C. THE BOARD MAY ASSESS A CIVIL PENALTY AS PRESCRIBED BY THE BOARD BY
34 RULE FOR A VIOLATION OF SUBSECTION B OF THIS SECTION. THE CIVIL PENALTY
35 SHALL NOT EXCEED FIFTY DOLLARS FOR EACH VIOLATION. THE BOARD SHALL DEPOSIT,
36 PURSUANT TO SECTIONS 35-146 AND 35-147, ALL MONIES IT RECEIVES FROM THIS
37 CIVIL PENALTY IN THE STATE GENERAL FUND. A SURGICAL ASSISTANT AND THE
38 SUPERVISING PHYSICIAN MAY CONTEST THE IMPOSITION OF THIS CIVIL PENALTY AS
39 PRESCRIBED BY THE BOARD BY RULE. THE IMPOSITION OF A CIVIL PENALTY IS PUBLIC
40 INFORMATION, AND THE BOARD MAY USE THIS INFORMATION IN ANY FUTURE
41 DISCIPLINARY ACTIONS.
42 32-1885. Persons and activities not required to be licensed
43 THIS ARTICLE DOES NOT APPLY TO:
44 1. A STUDENT WHO IS ENROLLED IN A SURGICAL ASSISTANT EDUCATION PROGRAM
45 APPROVED BY THE BOARD AND WHO IS ASSISTING IN A SURGICAL OPERATION THAT IS AN

1 INTEGRAL PART OF THE PROGRAM OF STUDY. TO BE EXEMPT FROM LICENSURE PURSUANT
2 TO THIS PARAGRAPH, A STUDENT SHALL REGISTER WITH THE BOARD ON A FORM
3 PRESCRIBED BY THE BOARD.

4 2. A SURGICAL ASSISTANT WHO IS EMPLOYED IN THE SERVICE OF THE FEDERAL
5 GOVERNMENT AND WHO PERFORMS SURGICAL ASSISTING DUTIES RELATED TO THAT
6 EMPLOYMENT.

7 3. A HEALTH CARE PROFESSIONAL WHO IS LICENSED PURSUANT TO THIS TITLE
8 AND WHO IS PRACTICING WITHIN THE SCOPE OF THE LICENSE.

9 32-1886. Qualifications; examination; exemption

10 A. BEGINNING JANUARY 1, 2010, AN APPLICANT FOR LICENSURE MUST:

11 1. PASS A NATIONAL CERTIFYING EXAMINATION APPROVED BY THE BOARD.

12 2. BE PHYSICALLY AND MENTALLY ABLE TO SAFELY PERFORM SURGICAL
13 ASSISTING.

14 3. NOT HAVE COMMITTED, WITHIN FIVE YEARS PRECEDING THE DATE OF THE
15 APPLICATION, A FELONY, WHETHER OR NOT INVOLVING MORAL TURPITUDE, OR A
16 MISDEMEANOR INVOLVING MORAL TURPITUDE.

17 4. NOT HAVE HAD A LICENSE TO PRACTICE REVOKED BY A REGULATORY BOARD IN
18 ANOTHER JURISDICTION IN THE UNITED STATES FOR AN ACT THAT OCCURRED IN THAT
19 JURISDICTION AND THAT CONSTITUTES UNPROFESSIONAL CONDUCT PURSUANT TO THIS
20 ARTICLE.

21 5. NOT HAVE SURRENDERED, RELINQUISHED OR GIVEN UP A LICENSE IN LIEU OF
22 DISCIPLINARY ACTION BY A REGULATORY BOARD IN ANOTHER JURISDICTION IN THE
23 UNITED STATES FOR AN ACT THAT OCCURRED IN THAT JURISDICTION AND THAT
24 CONSTITUTES UNPROFESSIONAL CONDUCT PURSUANT TO THIS ARTICLE.

25 B. ANY NATIONAL CERTIFYING EXAMINATION ADOPTED BY THE BOARD SHALL
26 REQUIRE GRADUATION FROM A SURGICAL ASSISTING PROGRAM THAT IS APPROVED BY THE
27 COMMISSION ON ACCREDITATION OF ALLIED HEALTH EDUCATION PROGRAMS OR A PROGRAM
28 WITH EQUIVALENT REQUIREMENTS AS APPROVED BY THE BOARD.

29 C. THE BOARD MAY EXEMPT AN APPLICANT FOR LICENSURE FROM THE
30 EXAMINATION REQUIREMENTS PRESCRIBED IN SUBSECTION A, PARAGRAPH 1 IF THE
31 APPLICANT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

32 1. IS CERTIFIED AS A SURGICAL ASSISTANT BY A NATIONAL PROFESSIONAL
33 CERTIFICATION ORGANIZATION THAT IS APPROVED BY THE BOARD BEFORE THE EFFECTIVE
34 DATE OF THIS ARTICLE.

35 2. HAS COMPLETED A MINIMUM OF THREE HUNDRED FIFTY DOCUMENTED
36 OPERATIONS AS A SURGICAL ASSISTANT AND HAS CONTINUOUSLY PRACTICED SURGICAL
37 ASSISTING FOR AT LEAST TWO YEARS IMMEDIATELY PRECEDING THE EFFECTIVE DATE OF
38 THIS ARTICLE. DOCUMENTATION MUST INCLUDE THE TIME AND PLACE OF THE
39 OPERATION, THE NAME OF THE SUPERVISING PHYSICIAN, THE MEDICAL RECORD NUMBER
40 AND A LISTING OF THE APPLICANT AS THE SURGICAL ASSISTANT ON THE OPERATIVE
41 RECORD.

42 3. IS OTHERWISE QUALIFIED FOR LICENSURE UNDER THIS ARTICLE.

43 D. THE BOARD MAY:

44 1. REQUIRE AN APPLICANT TO SUBMIT WRITTEN OR ORAL PROOF OF
45 CREDENTIALS.

1 2. CONDUCT INVESTIGATIONS IT DEEMS NECESSARY TO ADVISE ITSELF WITH
2 RESPECT TO THE QUALIFICATIONS OF THE APPLICANT, INCLUDING PHYSICAL
3 EXAMINATIONS, MENTAL EVALUATIONS, WRITTEN COMPETENCY EXAMINATIONS OR ANY
4 COMBINATION OF SUCH EXAMINATIONS AND EVALUATIONS.

5 E. THE BOARD MAY DELEGATE TO THE EXECUTIVE DIRECTOR THE AUTHORITY TO
6 DENY LICENSES TO APPLICANTS WHO DO NOT MEET THE REQUIREMENTS OF THIS SECTION.

7 32-1887. Applications

8 A. EACH APPLICANT MUST FILE A VERIFIED COMPLETED APPLICATION AS
9 PRESCRIBED AND PROVIDED BY THE BOARD. THE APPLICANT MUST INCLUDE WITH THE
10 APPLICATION AN APPLICATION FEE PRESCRIBED BY THE BOARD.

11 B. THE APPLICATION SHALL REQUIRE THE SUBMISSION OF EVIDENCE,
12 CREDENTIALS AND OTHER PROOF NECESSARY TO SATISFY THE BOARD THAT THE APPLICANT
13 QUALIFIES FOR LICENSURE.

14 C. THE APPLICATION SHALL CONTAIN THE OATH OF THE APPLICANT THAT:

15 1. ALL INFORMATION CONTAINED IN THE APPLICATION AND EVIDENCE SUBMITTED
16 WITH IT ARE TRUE AND CORRECT.

17 2. THE CREDENTIALS SUBMITTED WERE NOT PROCURED BY FRAUD OR
18 MISREPRESENTATION OR ANY MISTAKE OF WHICH THE APPLICANT IS AWARE.

19 3. THE APPLICANT IS THE LAWFUL HOLDER OF THE CREDENTIALS.

20 D. AN APPLICATION SUBMITTED TO THE BOARD AND ANY EVIDENCE, CREDENTIALS
21 OR OTHER PROOF SUBMITTED WITH THE APPLICATION ARE THE PROPERTY OF THE BOARD
22 AND PART OF THE PERMANENT RECORD OF THE BOARD AND SHALL NOT BE RETURNED TO AN
23 APPLICANT.

24 E. THE BOARD SHALL PROMPTLY NOTIFY AN APPLICANT, IN WRITING, OF ANY
25 DEFICIENCIES IN THE APPLICATION THAT PREVENT IT FROM BEING A COMPLETED
26 APPLICATION.

27 F. THE BOARD MAY DENY A LICENSE TO AN APPLICANT WHO DOES NOT MEET THE
28 REQUIREMENTS OF THIS ARTICLE.

29 32-1888. Fees

30 A. THE BOARD SHALL ESTABLISH NONREFUNDABLE FEES AND PENALTIES THAT DO
31 NOT EXCEED THE FOLLOWING:

32 1. FOR PROCESSING AN APPLICATION FOR AN ACTIVE LICENSE, FOUR HUNDRED
33 DOLLARS.

34 2. FOR ISSUING AN ACTIVE LICENSE, FOUR HUNDRED DOLLARS.

35 3. FOR AN APPLICATION FOR A TEMPORARY LICENSE, ONE HUNDRED FIFTY
36 DOLLARS.

37 4. FOR CONVERSION FROM A TEMPORARY LICENSE TO A REGULAR LICENSE, THREE
38 HUNDRED DOLLARS.

39 5. FOR ANNUAL RENEWAL OF A REGULAR LICENSE, FOUR HUNDRED DOLLARS.

40 6. FOR LATE RENEWAL OF A REGULAR LICENSE, THREE HUNDRED FIFTY DOLLARS.

41 7. FOR ISSUANCE OF A DUPLICATE LICENSE, TWENTY-FIVE DOLLARS.

42 8. FOR VERIFICATION OF A LICENSE, TEN DOLLARS.

43 9. FOR COPYING RECORDS, DOCUMENTS, LETTERS, MINUTES, APPLICATIONS AND
44 FILES, ONE DOLLAR FOR THE FIRST THREE PAGES AND TWENTY-FIVE CENTS FOR EACH
45 ADDITIONAL PAGE.

1 10. FOR THE SALE OF COMPUTERIZED TAPES OR DISKETTES THAT DO NOT REQUIRE
2 PROGRAMMING, ONE HUNDRED DOLLARS.

3 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, ON WRITTEN REQUEST
4 THE BOARD MAY RETURN THE LICENSE RENEWAL FEE FOR GOOD CAUSE SHOWN.

5 C. THE BOARD MAY COLLECT FROM A DRAWER OF A DISHONORED CHECK, DRAFT,
6 ORDER OR NOTE AN AMOUNT ALLOWED PURSUANT TO SECTION 44-6852.

7 32-1889. Change of address; penalty

8 A. A PERSON WHO HOLDS AN ACTIVE LICENSE AS A SURGICAL ASSISTANT IN
9 THIS STATE MUST INFORM THE BOARD IN WRITING WITHIN THIRTY DAYS OF THAT
10 PERSON'S CURRENT RESIDENCE ADDRESS, OFFICE ADDRESS AND TELEPHONE NUMBER AND
11 OF EACH CHANGE IN RESIDENCE AND OFFICE ADDRESS OR TELEPHONE NUMBER THAT
12 OCCURS. A RESIDENTIAL ADDRESS IS NOT AVAILABLE TO THE PUBLIC UNLESS IT IS
13 THE ONLY ADDRESS OF RECORD.

14 B. THE BOARD MAY ASSESS ITS COSTS INCURRED IN LOCATING A SURGICAL
15 ASSISTANT WHO FAILS TO COMPLY WITH SUBSECTION A WITHIN THIRTY DAYS AFTER THE
16 DATE OF CHANGE. THE BOARD MAY ALSO ASSESS A PENALTY OF NOT MORE THAN ONE
17 HUNDRED DOLLARS AGAINST THE SURGICAL ASSISTANT.

18 32-1890. Grounds for disciplinary action; duty to report;
19 immunity; proceedings; board action; notice; civil
20 penalty

21 A. THE BOARD ON ITS OWN MOTION MAY INVESTIGATE ANY EVIDENCE THAT
22 APPEARS TO SHOW THAT A SURGICAL ASSISTANT IS OR MAY BE MEDICALLY INCOMPETENT,
23 IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT OR IS OR MAY BE MENTALLY OR
24 PHYSICALLY UNABLE TO CARRY OUT APPROVED SURGICAL ASSISTING. ANY PHYSICIAN,
25 SURGICAL ASSISTANT OR HEALTH CARE INSTITUTION AS DEFINED IN SECTION 36-401
26 MUST, AND ANY OTHER PERSON MAY, REPORT TO THE BOARD ANY INFORMATION THE
27 PHYSICIAN, SURGICAL ASSISTANT, HEALTH CARE INSTITUTION OR OTHER PERSON HAS
28 THAT APPEARS TO SHOW THAT A SURGICAL ASSISTANT IS OR MAY BE MEDICALLY
29 INCOMPETENT, IS OR MAY BE GUILTY OF UNPROFESSIONAL CONDUCT OR IS OR MAY BE
30 MENTALLY OR PHYSICALLY UNABLE TO CARRY OUT APPROVED SURGICAL ASSISTING. THE
31 BOARD OR THE EXECUTIVE DIRECTOR SHALL NOTIFY THE SURGICAL ASSISTANT OF THE
32 CONTENT OF THE REPORTED INFORMATION IN WRITING WITHIN ONE HUNDRED TWENTY DAYS
33 OF ITS RECEIPT OF THE INFORMATION. ANY PHYSICIAN, SURGICAL ASSISTANT, HEALTH
34 CARE INSTITUTION OR OTHER PERSON THAT REPORTS OR PROVIDES INFORMATION TO THE
35 BOARD IN GOOD FAITH IS NOT SUBJECT TO AN ACTION FOR CIVIL DAMAGES AS A RESULT
36 OF REPORTING OR PROVIDING INFORMATION. IF REQUESTED, THE NAME OF THE
37 REPORTER SHALL NOT BE DISCLOSED UNLESS THE INFORMATION IS ESSENTIAL TO
38 PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION.

39 B. THE BOARD OR, IF DELEGATED BY THE BOARD, THE EXECUTIVE DIRECTOR MAY
40 REQUIRE A MENTAL, PHYSICAL OR MEDICAL COMPETENCY EXAMINATION OR ANY
41 COMBINATION OF THOSE EXAMINATIONS OR MAY MAKE INVESTIGATIONS, INCLUDING
42 INVESTIGATIONAL INTERVIEWS BETWEEN REPRESENTATIVES OF THE BOARD AND THE
43 SURGICAL ASSISTANT AND THE SUPERVISING PHYSICIAN, AS IT DEEMS NECESSARY TO
44 FULLY INFORM ITSELF WITH RESPECT TO ANY INFORMATION REPORTED PURSUANT TO
45 SUBSECTION A OF THIS SECTION. THESE EXAMINATIONS MAY INCLUDE BIOLOGICAL

1 FLUID TESTING AND OTHER EXAMINATIONS KNOWN TO DETECT THE PRESENCE OF ALCOHOL
2 OR OTHER DRUGS. THE BOARD OR, IF DELEGATED BY THE BOARD, THE EXECUTIVE
3 DIRECTOR MAY REQUIRE THE SURGICAL ASSISTANT, AT THE SURGICAL ASSISTANT'S
4 EXPENSE, TO UNDERGO ASSESSMENT BY A BOARD APPROVED REHABILITATIVE, RETRAINING
5 OR ASSESSMENT PROGRAM.

6 C. IF THE BOARD FINDS, BASED ON THE INFORMATION IT RECEIVES UNDER
7 SUBSECTIONS A AND B OF THIS SECTION, THAT THE PUBLIC SAFETY REQUIRES
8 EMERGENCY ACTION AND INCORPORATES A FINDING TO THAT EFFECT IN ITS ORDER, THE
9 BOARD MAY RESTRICT A LICENSE OR ORDER A SUMMARY SUSPENSION OF A LICENSE
10 PENDING PROCEEDINGS FOR REVOCATION OR OTHER ACTION. IF THE BOARD ACTS
11 PURSUANT TO THIS SUBSECTION, THE SURGICAL ASSISTANT SHALL BE SERVED WITH A
12 WRITTEN NOTICE OF COMPLAINT AND FORMAL HEARING, SETTING FORTH THE CHARGES,
13 AND IS ENTITLED TO A FORMAL HEARING BEFORE THE BOARD OR AN ADMINISTRATIVE LAW
14 JUDGE ON THE CHARGES WITHIN SIXTY DAYS PURSUANT TO TITLE 41, CHAPTER 6,
15 ARTICLE 10.

16 D. IF, AFTER COMPLETING ITS INVESTIGATION, THE BOARD FINDS THAT THE
17 INFORMATION PROVIDED PURSUANT TO SUBSECTION A OF THIS SECTION IS NOT OF
18 SUFFICIENT SERIOUSNESS TO MERIT DISCIPLINARY ACTION AGAINST THE SURGICAL
19 ASSISTANT'S LICENSE, IT MAY TAKE THE FOLLOWING ACTIONS:

20 1. DISMISS IF, IN THE OPINION OF THE BOARD, THE COMPLAINT IS WITHOUT
21 MERIT.

22 2. FILE AN ADVISORY LETTER. THE LICENSEE MAY FILE A WRITTEN RESPONSE
23 WITH THE BOARD WITHIN THIRTY DAYS AFTER RECEIVING THE ADVISORY LETTER.

24 E. IF THE BOARD FINDS THAT IT CAN TAKE REHABILITATIVE OR DISCIPLINARY
25 ACTION WITHOUT THE PRESENCE OF THE SURGICAL ASSISTANT AT A FORMAL INTERVIEW,
26 IT MAY ENTER INTO A CONSENT AGREEMENT WITH THE SURGICAL ASSISTANT TO RESTRICT
27 THE SURGICAL ASSISTANT'S PRACTICE OR TO REHABILITATE THE SURGICAL ASSISTANT
28 IN ORDER TO PROTECT THE PUBLIC AND ENSURE THE SURGICAL ASSISTANT'S ABILITY TO
29 SAFELY PERFORM SURGICAL ASSISTING. THE BOARD MAY ALSO REQUIRE THE SURGICAL
30 ASSISTANT TO SUCCESSFULLY COMPLETE A BOARD APPROVED REHABILITATIVE,
31 RETRAINING OR ASSESSMENT PROGRAM AT THE SURGICAL ASSISTANT'S OWN EXPENSE.

32 F. IF, AFTER COMPLETING ITS INVESTIGATION, THE BOARD BELIEVES THAT THE
33 INFORMATION MAY BE OF SUFFICIENT SERIOUSNESS TO MERIT DIRECT ACTION AGAINST
34 THE SURGICAL ASSISTANT'S LICENSE, IT MAY REQUEST A FORMAL INTERVIEW WITH THE
35 SURGICAL ASSISTANT AND THE SUPERVISING PHYSICIAN. IF THE SURGICAL ASSISTANT
36 REFUSES THE REQUEST FOR A FORMAL INTERVIEW, THE BOARD MAY ISSUE A FORMAL
37 COMPLAINT AND ORDER THAT A HEARING BE HELD PURSUANT TO TITLE 41, CHAPTER 6,
38 ARTICLE 10. THE BOARD SHALL NOTIFY THE SURGICAL ASSISTANT IN WRITING OF THE
39 TIME, DATE AND PLACE OF THE FORMAL INTERVIEW AT LEAST TWENTY DAYS BEFORE THE
40 INTERVIEW. THE NOTICE SHALL INCLUDE THE RIGHT OF THE SURGICAL ASSISTANT TO
41 BE REPRESENTED BY COUNSEL AND SHALL FULLY SET FORTH THE CONDUCT OR MATTERS TO
42 BE DISCUSSED.

43 G. AFTER THE FORMAL INTERVIEW, THE BOARD MAY TAKE THE FOLLOWING
44 ACTIONS:

1 1. DISMISS IF, IN THE OPINION OF THE BOARD, THE INFORMATION IS WITHOUT
2 MERIT.

3 2. FILE AN ADVISORY LETTER. THE LICENSEE MAY FILE A WRITTEN RESPONSE
4 WITH THE BOARD WITHIN THIRTY DAYS AFTER RECEIVING THE ADVISORY LETTER.

5 3. ENTER INTO A STIPULATION WITH THE SURGICAL ASSISTANT TO RESTRICT
6 THE SURGICAL ASSISTANT'S PRACTICE OR TO REHABILITATE, RETRAIN OR ASSESS THE
7 SURGICAL ASSISTANT IN ORDER TO PROTECT THE PUBLIC AND ENSURE THE SURGICAL
8 ASSISTANT'S ABILITY TO SAFELY PERFORM SURGICAL ASSISTING. THE BOARD MAY ALSO
9 REQUIRE THE SURGICAL ASSISTANT TO SUCCESSFULLY COMPLETE A BOARD APPROVED
10 REHABILITATIVE, RETRAINING OR ASSESSMENT PROGRAM AT THE SURGICAL ASSISTANT'S
11 OWN EXPENSE.

12 4. FILE A LETTER OF REPRIMAND.

13 5. ISSUE A DECREE OF CENSURE. A DECREE OF CENSURE IS A DISCIPLINARY
14 ACTION AGAINST THE SURGICAL ASSISTANT'S LICENSE.

15 6. FIX A PERIOD AND TERMS OF PROBATION BEST ADAPTED TO PROTECT THE
16 PUBLIC HEALTH AND SAFETY AND REHABILITATE OR EDUCATE THE SURGICAL ASSISTANT.
17 FAILURE BY THE SURGICAL ASSISTANT TO COMPLY WITH ANY TERM OF PROBATION IS
18 CAUSE FOR INITIATING FORMAL PROCEEDINGS PURSUANT TO TITLE 41, CHAPTER 6,
19 ARTICLE 10. PROBATION MAY INCLUDE:

20 (a) RESTRICTIONS ON THE SURGICAL ASSISTING THE SURGICAL ASSISTANT MAY
21 PERFORM.

22 (b) TEMPORARY SUSPENSION FOR NOT MORE THAN TWELVE MONTHS.

23 (c) EDUCATION OR REHABILITATION AT THE LICENSEE'S OWN EXPENSE.

24 H. IF THE BOARD FINDS THAT THE INFORMATION PROVIDED PURSUANT TO
25 SUBSECTION A OF THIS SECTION WARRANTS SUSPENSION OR REVOCATION OF A SURGICAL
26 ASSISTANT'S LICENSE, IT SHALL IMMEDIATELY INITIATE FORMAL PROCEEDINGS FOR THE
27 SUSPENSION OR REVOCATION OF THE LICENSE AS PROVIDED IN TITLE 41, CHAPTER 6,
28 ARTICLE 10. THE NOTICE OF COMPLAINT AND HEARING IS EFFECTIVE BY MAILING A
29 COPY OF THE NOTICE OF COMPLAINT AND HEARING BY CERTIFIED MAIL TO THE SURGICAL
30 ASSISTANT'S LAST KNOWN ADDRESS OF RECORD IN THE BOARD'S FILES. THE NOTICE OF
31 COMPLAINT AND HEARING IS COMPLETE AT THE TIME OF ITS DEPOSIT IN THE MAIL.

32 I. A SURGICAL ASSISTANT WHO AFTER A FORMAL HEARING PURSUANT TO TITLE
33 41, CHAPTER 6, ARTICLE 10 IS FOUND TO BE MEDICALLY INCOMPETENT, GUILTY OF
34 UNPROFESSIONAL CONDUCT OR MENTALLY OR PHYSICALLY UNABLE TO SAFELY PERFORM
35 SURGICAL ASSISTING, OR ANY COMBINATION OF THESE, IS SUBJECT TO CENSURE OR
36 PROBATION OR SUSPENSION OR REVOCATION OF THE LICENSE, OR ANY COMBINATION OF
37 THESE, FOR A PERIOD OF TIME OR PERMANENTLY AND UNDER CONDITIONS THE BOARD
38 DEEMS APPROPRIATE FOR THE PROTECTION OF THE PUBLIC HEALTH AND SAFETY.

39 J. IN A FORMAL INTERVIEW PURSUANT TO SUBSECTION G OF THIS SECTION OR
40 IN A HEARING PURSUANT TO SUBSECTION I OF THIS SECTION, THE BOARD, IN ADDITION
41 TO ANY OTHER ACTION, MAY IMPOSE A CIVIL PENALTY OF AT LEAST THREE HUNDRED
42 DOLLARS BUT NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION OF THIS
43 ARTICLE OR A RULE ADOPTED PURSUANT TO THIS ARTICLE.

44 K. AN ADVISORY LETTER IS A PUBLIC DOCUMENT AND MAY BE USED IN FUTURE
45 DISCIPLINARY ACTIONS AGAINST A SURGICAL ASSISTANT.

1 L. THE BOARD MAY CHARGE THE COSTS OF A FORMAL HEARING TO THE LICENSEE
2 IF IT FINDS THE LICENSEE IN VIOLATION OF THIS ARTICLE.

3 M. IF DURING THE COURSE OF AN INVESTIGATION THE BOARD DETERMINES THAT
4 A CRIMINAL VIOLATION MAY HAVE OCCURRED INVOLVING THE PERFORMANCE OF SURGICAL
5 ASSISTING, IT MUST PROVIDE EVIDENCE OF THE VIOLATION TO THE APPROPRIATE
6 CRIMINAL JUSTICE AGENCY.

7 N. THE BOARD MAY ACCEPT THE SURRENDER OF AN ACTIVE LICENSE FROM A
8 PERSON WHO ADMITS IN WRITING TO ANY OF THE FOLLOWING:

- 9 1. BEING UNABLE TO SAFELY PERFORM SURGICAL ASSISTING.
- 10 2. HAVING COMMITTED AN ACT OF UNPROFESSIONAL CONDUCT.
- 11 3. HAVING VIOLATED THIS ARTICLE OR A BOARD RULE.

12 O. IN DETERMINING THE APPROPRIATE DISCIPLINARY ACTION UNDER THIS
13 SECTION, THE BOARD SHALL CONSIDER ALL PREVIOUS NONDISCIPLINARY AND
14 DISCIPLINARY ACTIONS AGAINST A LICENSEE.

15 32-1891. Right to examine and copy evidence; subpoena
16 authority; right to counsel; confidentiality of
17 records

18 A. IN CONNECTION WITH AN INVESTIGATION CONDUCTED BY THE BOARD ON ITS
19 OWN MOTION OR AS THE RESULT OF INFORMATION RECEIVED PURSUANT TO SECTION
20 32-1890, THE BOARD OR ITS DULY AUTHORIZED AGENT OR EMPLOYEE AT ALL REASONABLE
21 TIMES SHALL HAVE ACCESS TO, FOR THE PURPOSE OF EXAMINATION, AND THE RIGHT TO
22 COPY ANY DOCUMENTS, REPORTS, RECORDS OR OTHER PHYSICAL EVIDENCE OF ANY PERSON
23 BEING INVESTIGATED OR THE REPORTS, THE RECORDS AND ANY OTHER DOCUMENTS
24 MAINTAINED BY AND IN THE POSSESSION OF ANY HOSPITAL, PHYSICIAN'S OFFICE,
25 SURGICAL ASSISTANT'S OFFICE, HEALTH CARE INSTITUTION AS DEFINED IN SECTION
26 36-401 OR OTHER PUBLIC OR PRIVATE AGENCY IF THE DOCUMENTS, REPORTS, RECORDS
27 OR EVIDENCE RELATE TO A SURGICAL ASSISTANT'S MEDICAL COMPETENCE,
28 UNPROFESSIONAL CONDUCT OR MENTAL OR PHYSICAL ABILITY TO SAFELY ENGAGE IN
29 SURGICAL ASSISTING.

30 B. FOR THE PURPOSE OF ALL INVESTIGATIONS AND PROCEEDINGS CONDUCTED BY
31 THE BOARD:

32 1. ON ITS OWN MOTION OR ON APPLICATION OF A PERSON INVOLVED IN AN
33 INVESTIGATION, THE BOARD MAY ISSUE SUBPOENAS COMPELLING THE ATTENDANCE AND
34 TESTIMONY OF WITNESSES OR DEMANDING THE PRODUCTION OF DOCUMENTS OR ANY OTHER
35 PHYSICAL EVIDENCE FOR EXAMINATION OR COPYING IF THE EVIDENCE RELATES TO THE
36 MEDICAL INCOMPETENCE, UNPROFESSIONAL CONDUCT OR MENTAL OR PHYSICAL ABILITY OF
37 A SURGICAL ASSISTANT TO SAFELY PERFORM SURGICAL ASSISTING. WITHIN FIVE DAYS
38 AFTER SERVICE OF A SUBPOENA REQUIRING THE PRODUCTION OF EVIDENCE IN THE
39 PERSON'S POSSESSION OR UNDER THE PERSON'S CONTROL, THE PERSON MAY PETITION
40 THE BOARD TO REVOKE, LIMIT OR MODIFY THE SUBPOENA. THE BOARD SHALL DO SO IF
41 IT BELIEVES THAT THE EVIDENCE REQUIRED DOES NOT RELATE TO VIOLATIONS OF THIS
42 ARTICLE, IS NOT RELEVANT TO THE SUBJECT MATTER OF THE HEARING OR
43 INVESTIGATION OR DOES NOT DESCRIBE WITH SUFFICIENT PARTICULARITY THE PHYSICAL
44 EVIDENCE REQUESTED.

45 2. A PERSON APPEARING BEFORE THE BOARD MAY BE REPRESENTED BY COUNSEL.

1 3. A BOARD MEMBER OR AGENT DESIGNATED BY THE BOARD MAY ADMINISTER
2 OATHS OR AFFIRMATIONS, EXAMINE WITNESSES AND RECEIVE EVIDENCE.

3 4. ON APPLICATION BY THE BOARD OR BY THE PERSON SUBPOENAED, THE
4 SUPERIOR COURT HAS JURISDICTION TO ISSUE AN ORDER TO DO EITHER OF THE
5 FOLLOWING:

6 (a) REQUIRE A PERSON TO APPEAR BEFORE THE BOARD OR ITS AUTHORIZED
7 AGENT TO PRODUCE EVIDENCE RELATING TO THE INVESTIGATION.

8 (b) REVOKE, LIMIT OR MODIFY A SUBPOENA IF THE COURT DETERMINES THAT
9 THE EVIDENCE DOES NOT RELATE TO A VIOLATION OF THIS ARTICLE, IS NOT RELEVANT
10 TO THE HEARING OR INVESTIGATION OR DOES NOT DESCRIBE WITH SUFFICIENT
11 PARTICULARITY THE PHYSICAL EVIDENCE REQUESTED.

12 C. THE FOLLOWING ITEMS ARE NOT AVAILABLE TO THE PUBLIC:

13 1. PATIENT RECORDS, INCLUDING CLINICAL RECORDS, MEDICAL REPORTS AND
14 LABORATORY STATEMENTS AND REPORTS.

15 2. FILES, FILMS, REPORTS OR ORAL STATEMENTS RELATING TO DIAGNOSTIC
16 FINDINGS OR TREATMENT OF PATIENTS.

17 3. ANY INFORMATION FROM WHICH A PATIENT OR THE PATIENT'S FAMILY MIGHT
18 BE IDENTIFIED.

19 4. INFORMATION RECEIVED AND RECORDS KEPT BY THE BOARD IN ITS
20 INVESTIGATIONS.

21 D. THIS SECTION AND ANY OTHER PROVISION OF LAW THAT MAKES
22 COMMUNICATIONS BETWEEN A PHYSICIAN AND PATIENT A PRIVILEGED COMMUNICATION DO
23 NOT APPLY TO INVESTIGATIONS OR PROCEEDINGS CONDUCTED PURSUANT TO THIS
24 ARTICLE. THE BOARD AND ITS EMPLOYEES, AGENTS AND REPRESENTATIVES SHALL KEEP
25 IN CONFIDENCE THE NAMES OF ANY PATIENTS WHOSE RECORDS ARE REVIEWED DURING THE
26 COURSE OF INVESTIGATIONS AND PROCEEDINGS PURSUANT TO THIS ARTICLE.

27 E. HOSPITAL RECORDS, MEDICAL STAFF RECORDS, MEDICAL STAFF REVIEW
28 COMMITTEE RECORDS, TESTIMONY CONCERNING THOSE RECORDS AND PROCEEDINGS RELATED
29 TO THE CREATION OF THOSE RECORDS ARE NOT AVAILABLE TO THE PUBLIC, SHALL BE
30 KEPT CONFIDENTIAL BY THE BOARD AND ARE SUBJECT TO THE SAME PROVISIONS OF LAW
31 CONCERNING DISCOVERY AND USE IN LEGAL ACTIONS AS ARE THE ORIGINAL RECORDS IN
32 THE POSSESSION AND CONTROL OF HOSPITALS, MEDICAL STAFFS AND MEDICAL STAFF
33 REVIEW COMMITTEES.

34 32-1892. Judicial review

35 EXCEPT AS PROVIDED IN SECTION 41-1092.08, SUBSECTION H, FINAL DECISIONS
36 OF THE BOARD ARE SUBJECT TO JUDICIAL REVIEW PURSUANT TO TITLE 12, CHAPTER 7,
37 ARTICLE 6.

38 32-1893. Violation; classification

39 A PERSON WHO DOES ANY OF THE FOLLOWING IS GUILTY OF A CLASS 6 FELONY:

40 1. PERFORMS SURGICAL ASSISTING IF THAT PERSON IS NOT LICENSED PURSUANT
41 TO THIS ARTICLE OR IS NOT EXEMPT FROM LICENSURE PURSUANT TO THIS ARTICLE.

42 2. SECURES A LICENSE PURSUANT TO THIS ARTICLE BY FRAUD OR DECEIT.

43 3. IMPERSONATES A BOARD MEMBER.

44 32-1894. Injunctions

45 A. THE SUPERIOR COURT MAY ISSUE AN INJUNCTION TO ENJOIN:

1 1. A PERSON WHO IS NOT LICENSED PURSUANT TO THIS ARTICLE OR WHO IS NOT
2 EXEMPT FROM LICENSURE PURSUANT TO THIS ARTICLE FROM SURGICAL ASSISTING.

3 2. A PERSON WHO IS LICENSED PURSUANT TO THIS ARTICLE FROM SURGICAL
4 ASSISTING IF THE COURT DETERMINES THAT THE LICENSEE WILL OR MAY CAUSE
5 IRREPARABLE DAMAGE TO THE PUBLIC HEALTH AND SAFETY BEFORE THE BOARD HAS AN
6 OPPORTUNITY TO ACT.

7 B. IN A PETITION FOR AN INJUNCTION PURSUANT TO SUBSECTION A, PARAGRAPH
8 1 IT IS SUFFICIENT FOR THE PETITIONER TO CHARGE THAT THE RESPONDENT ON A DAY
9 CERTAIN IN A NAMED COUNTY ENGAGED IN THE PERFORMANCE OF HEALTH CARE TASKS
10 WITHOUT BEING LICENSED OR EXEMPT FROM LICENSURE PURSUANT TO THIS ARTICLE. IT
11 IS NOT NECESSARY FOR THE PETITIONER TO SHOW DAMAGE OR INJURY.

12 C. IN A PETITION FOR AN INJUNCTION PURSUANT TO SUBSECTION A, PARAGRAPH
13 2 THE PETITIONER SHALL SPECIFY THE FACTS REGARDING THE LICENSEE'S THREAT TO
14 THE PUBLIC HEATH AND SAFETY.

15 D. THE BOARD SHALL FILE THE PETITION IN THE SUPERIOR COURT IN MARICOPA
16 COUNTY OR IN THE COUNTY WHERE THE RESPONDENT RESIDES OR IS FOUND.

17 Sec. 3. Deposit of monies

18 A. Notwithstanding section 32-1805, Arizona Revised Statutes, the
19 board of osteopathic examiners in medicine and surgery shall deposit fifty
20 per cent of monies collected pursuant to title 32, chapter 17, article 5,
21 Arizona Revised Statutes, as added by this act, in the board of osteopathic
22 examiners in medicine and surgery fund to reimburse the board for the
23 appropriation made pursuant to this act and shall deposit the remaining fifty
24 per cent in the separate account established pursuant to section 32-1805,
25 Arizona Revised Statutes, as amended by this act, until all monies
26 appropriated pursuant to section 4 of this act are repaid to the fund.

27 B. The department of administration shall charge interest to the fund
28 on the surgical assistant monies at the rate that is determined by the state
29 treasurer and that equals the average rate that monies would have earned
30 through investment if they had been state general fund monies.

31 Sec. 4. Appropriation; regulation of surgical assistants;
32 exemption

33 A. The sum of \$100,000 is appropriated from the board of osteopathic
34 examiners in medicine and surgery fund in fiscal year 2009-2010 for start-up
35 and operating costs to implement the requirements of this act.

36 B. The appropriation made in subsection A of this section is exempt
37 from the provisions of section 35-190, Arizona Revised Statutes, relating to
38 lapsing of appropriations.

39 Sec. 5. Requirements for enactment; two-thirds vote

40 Pursuant to article IX, section 22, Constitution of Arizona, this act
41 is effective only on the affirmative vote of at least two-thirds of the
42 members of each house of the legislature and is effective immediately on the
43 signature of the governor or, if the governor vetoes this act, on the
44 subsequent affirmative vote of at least three-fourths of the members of each
45 house of the legislature.